

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

05 10950 RWZ

INDEPENDENT DISPATCH, INC )

Plaintiff, )

vs. )

F. C. Meyers Packaging, LLC )

Defendants. )

COMPLAINT

MAGISTRATE JUDGE JBC

RECEIPT # 64096  
AMOUNT \$ 25  
SUMMONS ISSUED yes  
LOCAL RULE 4.1 yes  
WAIVER FORM yes  
MCF ISSUED yes  
BY DPTY. CLK. FW  
DATE 5/1/05

Plaintiff, Independent Dispatch, Inc. as follows:

**INTRODUCTION**

1. This is an action to recover \$28,486.60 in freight charges, for interstate transportation services provided at the request of and to the benefit of Defendant.

**PARTIES**

2. Plaintiff, Independent Dispatch, Inc. (hereinafter "IDI") is a Oregon corporation with a principal place of business at 214 N.E Middlefield Road, Portland, Oregon. IDI is a freight forwarder and intermodal sales agent on the shipments at issue.

3. On information and belief, F.C. Meyers Packaging, LLC is a corporation with its headquarters in Lawrence, Massachusetts.

**JURISDICTION**

4. The Court has subject matter jurisdiction under 28 USC §1337 as the claim arises out of Defendant's failure to pay rail and motor carrier freight charges for interstate transportation in violation of 49 U.S.C. §§10743 and 13706.

5. The Court has personal jurisdiction as Defendant has its headquarters in this judicial

district.

### **STATEMENT OF FACTS**

6. In July 2004, IDI provided a rate proposal to defendant. The rate proposal states that the rates are good through September 1, 2004.

7. The rates contained a 7 % fuel surcharge.

8. Defendant tendered a series of shipments to IDI.

9. IDI submitted its freight bills to defendant, and defendant paid the bills.

10. Prior to November 2004, IDI provided a new rate proposal to defendant. The rate proposal states that these rates do not contain the fuel surcharge.

11. Because of the escalating fuel costs, the fuel surcharge was to be billed as a separate line item.

12. After receipt of the November Rate Proposal, Defendant continued tendering shipments to IDI..

13. IDI submitted its freight bills to defendant, but in November and December 2004, defendant failed and refused to pay the freight charges, though it continued to tender shipments to IDI.

14. The unpaid freight and accessorial charges are 28,485.60.

15. IDI has paid the underlying rail carriers and motor carriers on each of the shipments at issue.

16. In January 2005, IDI refused to provide further service, and demanded payment of the outstanding charges.

17. Despite repeated demand upon defendant and its attorney including attempts to settle the matter, defendant continues to refuse to pay the outstanding charges.

18. In addition to the freight and other transportation charges, IDI has incurred significant attorney fees and administrative costs in attempting to resolve this matter without resort to litigation.

**COUNT I - VIOLATION OF 49 U.S.C. §§ 10743 AND 13706**

19. IDI repeats and realleges paragraphs 1 through 18 as if set forth fully herein.

20. Defendant was the shipper and beneficial owner of each of the shipments at issue.

21. Under 49 U.S.C. §10743 and §13706 Defendant has a statutory obligation to pay the carriers for the transportation services provided.

22. IDI is a carrier as defined at 49 U.S.C. 13102.

23. IDI also stands in the shoes of the underlying carriers having paid each of the motor and rail carriers that performed the physical transportation of the shipments at issue. Plaintiff is the subrogee of these carriers and possesses all of the contractual and statutory rights of the carriers in regard to the collection of their freight, accessorial and detention charges.

24. As a freight forwarder, IDI is the receiving carrier and has a statutory right to payment of the freight charges from Defendant. IDI may also assert the rights of the underlying rail and motor carriers, having paid those carriers in full.

25. As a result of defendants violation of the statutes, IDI has been damaged in the amount of \$28,486.60 freight, accessorial and detention charges, plus interest, attorney fees and costs.

**COUNT II - BREACH OF CONTRACT**

26. IDI repeats and realleges paragraphs 1 through 25 as if set forth fully herein.

27. Defendant contracted with IDI to perform transportation services on a number

of shipments.

28. IDI specified the transportation charges, and later the accessorial and detention charges, for each of the shipments. Defendant authorized IDI to proceed and agreed to pay the charges.

29. IDI performed its duties by providing for the interstate, intermodal movement of the shipments.

30. Each of the shipments was delivered in good condition to the consignee.

31. IDI paid the underlying motor and rail carriers their charges for the shipments at issue.

32. IDI invoiced Defendant for the freight charges, but Defendant failed and refused to pay IDI..

33. Defendant breached the agreement whereby IDI would provide for the interstate, intermodal shipment of defendant's goods, at defendant's direction and request, and defendant would pay IDI the agreed transportation rates, plus accessorial and detention charges.

34. As a result of defendant's breach of the contract, IDI has been damaged in the amount of \$28,486.60 freight, accessorial and detention charges.

35. Plaintiff is also entitled to interest, attorney fees and costs.

### **COUNT III - OPEN BOOK ACCOUNT**

36. Plaintiff repeats and realleges paragraphs 1 through 35 as if set forth fully herein.

37. Defendant owes IDI \$28,486.60 according to the account hereto annexed as Exhibit A.

### **COUNT IV - QUANTUM MERUIT**

38. Plaintiff repeats and realleges paragraphs 1 through 37 as if set forth fully herein.

39. Defendant benefitted from IDI's work in providing for the interstate, intermodal transportation of its goods, and received the benefit of having its goods transported from origin to destination by the motor and rail carriers IDI provided and paid for.

40. Though Defendant received and accepted the benefit of the transportation services, it has failed and refused to pay IDI for its services or the services of the underlying carriers.

41. The reasonable value of the services provided to Defendant was \$28,486.60

42. In addition, IDI has incurred significant fees and costs attempting to resolve this matter without resort to litigation.

WHEREFORE, Plaintiff prays for the following relief:

1. That the Plaintiff have and recover of the Defendants the sum of \$28,486.60 plus interest from the date such freight charges became due;
2. That the Plaintiff have and recover its reasonable attorney fees from Defendant;
3. That the costs of this action be taxed to the Defendant;
4. And for all such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Liese Gallagher Howarth  
BBO # 637101  
GALLAGHER & HOWARTH, P.C.  
68 Bridge Street, Suite 207  
Suffield, CT 06078  
(860) 254-5434  
(860) 254-5430 Facsimile

Date: April 28, 2005

**Aged Accounts Receivable**

February 1, 2005 1:14 PM

Independent Dispatch, Inc.

Page 1

MS

(Detail, aged as of February 1, 2005)

Aged by transaction date.

Customer: No.: 5566

No.	Name	.....Document.....		.....Aged Customer Balances.....					Doc.
Trx Date	Description	Typ	Number	Balance Due	Current	31 - 60 Days	61 - 90 Days	Over 90 Days	Curr.
5566	FC Meyer Packaging		Phone	724-523-5565	Contact	Chuck Steinbrecher			
*** Over Limit ***									
11/18/04	Order 651878	Inv	248739	1,943.00	0.00	0.00	1,943.00	0.00	
11/18/04	Order 652039	Inv	248886	2,162.00	0.00	0.00	2,162.00	0.00	
11/19/04	Order 654202	Inv	249032	2,584.00	0.00	0.00	2,584.00	0.00	
11/19/04	Order 654203	Inv	249033	2,379.00	0.00	0.00	2,379.00	0.00	
11/22/04	Order 654216	Inv	249173	2,297.00	0.00	0.00	2,297.00	0.00	
11/23/04	Order 654403	Inv	249333	2,583.00	0.00	0.00	2,583.00	0.00	
11/23/04	Order 654431	Inv	249336	2,377.00	0.00	0.00	2,377.00	0.00	
11/23/04	Order 654433	Inv	249338	2,583.00	0.00	0.00	2,583.00	0.00	
11/23/04	Order 654434	Inv	249339	2,583.00	0.00	0.00	2,583.00	0.00	
11/26/04	Order 654429	Inv	249579	2,440.00	0.00	0.00	2,440.00	0.00	
12/15/04	Order 656045	Inv	251212	2,037.00	0.00	2,037.00	0.00	0.00	
12/30/04	Order 654428	Inv	252247	365.00	0.00	365.00	0.00	0.00	
12/30/04	Order 654435	Inv	252248	350.00	0.00	350.00	0.00	0.00	
12/30/04	Order 654432	Inv	252249	365.00	0.00	365.00	0.00	0.00	
12/30/04	Order 654430	Inv	252250	512.00	0.00	512.00	0.00	0.00	
5566	Total Amount Due			27,560.00	0.00	3,629.00	23,931.00	0.00	
			Credit Limit:	1	0.00%	13.17%	86.83%	0.00%	
	Report Total Amount Due(LCY)			27,560.00	0.00	3,629.00	23,931.00	0.00	
					0.00%	13.17%	86.83%	0.00%	

**Aged Accounts Receivable**

January 31, 2005 1:36 PM

Independent Dispatch, Inc.

Page 1

MS

(Detail, aged as of January 31, 2005)

Aged by transaction date.

Customer: No.: 5566

No.	Name	.....Document.....		.....Aged Customer Balances .....				Doc.	
Trx Date	Description	Typ	Number	Balance Due	Current	31 - 60 Days	61 - 90 Days	Over 90 Days	Curr.
5566	FC Meyer Packaging	Phone	724-523-5565	Contact	Chuck				
*** Over Limit ***									
10/05/04	Order 646210A	Inv	9539	105.00	0.00	0.00	0.00	105.00	
12/17/04	Order 653542A	Inv	10081	100.00	0.00	100.00	0.00	0.00	
12/17/04	Order 654434A	Inv	10082	45.00	0.00	45.00	0.00	0.00	
12/17/04	Order 653537A	Inv	10083	187.50	0.00	187.50	0.00	0.00	
12/17/04	Order 653539A	Inv	10084	125.00	0.00	125.00	0.00	0.00	
12/17/04	Order 653569A	Inv	10085	75.00	0.00	75.00	0.00	0.00	
12/17/04	Order 654151A	Inv	10086	25.00	0.00	25.00	0.00	0.00	
12/17/04	Order 653589A	Inv	10087	64.00	0.00	64.00	0.00	0.00	
12/17/04	Order 654152A	Inv	10088	25.00	0.00	25.00	0.00	0.00	
12/17/04	Order 654154A	Inv	10089	25.00	0.00	25.00	0.00	0.00	
12/17/04	Order 654196A	Inv	10090	50.00	0.00	50.00	0.00	0.00	
12/17/04	Order 654215A	Inv	10091	100.00	0.00	100.00	0.00	0.00	
5566	Total Amount Due			926.50	0.00	821.50	0.00	105.00	
		Credit Limit:	1		0.00%	88.67%	0.00%	11.33%	
Report Total Amount Due(LCY)									
				926.50	0.00	821.50	0.00	105.00	
					0.00%	88.67%	0.00%	11.33%	



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Independent Dispatch, Inc. v. F.C. Meyers Packaging, LLC
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- \_\_\_ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or 121 for patent, trademark, or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- \_\_\_ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- \_\_\_ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- \_\_\_ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Liese Gallagher HowarthADDRESS 68 Bridge Street, Suite 207, Suffield, CT 06078TELEPHONE NO. 860-254-5434



JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

INDEPENDENT DISPATCH, INC.

(b) County of Residence of First Listed Plaintiff Multnomah, Oregon  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gallagher & Howarth, PC; 68 Bridge Street, Suite 207,  
Suffield, CT 06078; 860-254-5434; Liese Gallagher Howarth

**DEFENDANTS**

F.C. MEYERS PACKAGING, LLC

County of Residence of First Listed Defendant Essex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1337; 49 USC 13706 & 10743

Brief description of cause:

Failure to pay freight charges for interstate transportation.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$ 28,486.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE N/A

DOCKET NUMBER

DATE

04/28/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE